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ABSTRACT

The goal of community forums is to stimulate and sustain citizen dialogue about public issues. Topical issues and controversies are used to explore the issue of freedom of expression. The discussion is framed around three different views. Those comprising the first view believe that the balance has swung too far toward unlimited freedom and that words and pictures can cause serious physical, moral, and social harm. Although these people differ on what kinds of speech should be curtailed, they all agree that some additional restriction on freedom of expression are appropriate. Proponents of a second point of view hold that adults need not be protected from controversial or offensive images. But they are concerned about the effects of certain materials on minors. They believe that adults have the judgment not to be swayed by extremist rhetoric, prurient stories, or blatant stereotypes. To them, the only appropriate action for government is to erect certain barriers so that young people are not exposed to objectionable messages. A third viewpoint would apply Justice Holmes' "clear and present danger" rule quite strictly. Even forms of expression that many people find offensive must be tolerated. Their solution to the problem of offensive ideas is to combat them with preferred ideas. More speech, they conclude, is always better than less. (SM)

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NATIONAL ISSUES FORUMS
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Freedom of Speech

Where to Draw the Line

In one of his District Court decisions, Learned Hand used a particularly apt phrase to describe a basic precept of democratic government. "Right conclusions," he said, "are more likely to be gathered out of a multitude of tongues...." There is no lack of occasions where experts and elected leaders can discuss public issues and debate "right conclusions." However, there is reason for concern about how and when the public joins in that conversation.

Judge Hand evoked the classical notion of democracy, which assumes that citizens think about public issues, and that their thoughts and feelings make a difference. Yet the assertion that the public ought to have a voice in public matters is often dismissed as well intended but naive. Even commentators who feel that the public *can* have a voice in public affairs frequently point with dismay at what is actually happening. In November 1986, columnist James Reston wrote that "there was general agreement here that ... the elections of 1986 were at best a disappointment and at worst a disgrace." The elections were a disappointment because the campaign did little to provoke discussion about critical national issues. "As usual, the people blame the politicians for this state of affairs and with good reason," wrote Reston, "but what of the people themselves? The latest estimate is that three out of five eligible voters didn't bother to go to the polls...."

The Domestic Policy Association (DPA), which sponsors the National Issues Forums, was formed in 1981 by a group of people who share Reston's concern about the nation's political dialogue. The DPA represents the pooled resources of a nationwide network of educational organizations and community groups.

The chief goal of the community Forums that take place under the auspices of the DPA is to stimulate and sustain a certain kind of conversation — a genuinely useful debate that moves beyond the bounds of partisan politics, beyond the airing of grievances to mutually acceptable responses to common problems.

Each year, the convenors of the National Issues Forums choose three issues for discussion. This year's topics have all been prominent in the news. The first of them is US-Soviet relations. What course should we pursue with the Soviets to minimize the risk of nuclear confrontation without jeopardizing national security? The second topic is international trade. What course should the nation take to close a widening trade gap? The third topic is freedom of expression, a concern that is especially pertinent this year as the nation celebrates the bicentennial of the Constitution. Where should the line be drawn that permits certain forms of speech and prohibits others?

The DPA provides short, nonpartisan books about each of the issues addressed in these Forums. The objective of these issue books is to present various points of view and to provide some of the facts needed to understand the issues.

The DPA sponsors an annual series of meetings to convey the results of these Forums to experts and elected officials. Our experience over the past five years has been that leaders *are* interested in your considered judgment about these issues. We have provided two questionnaires in this book, one at the beginning and one at the end. With these, we can gain a better understanding of what leaders are most interested in knowing — how your initial thoughts and feelings may differ from the considered judgment you reach after reading this material and taking part in discussion. So before you begin reading and then after you have attended a Forum, please fill out the questionnaires and then hand them to your Forum moderator or mail them back to us.

Reaching conclusions about what ought to be done about each of these three issues requires something more than sound reasoning or getting the facts. It requires taking into consideration other people's views and working toward a consensus about the common ground. We already know a great deal about how we differ from each other. We need to know more about how and where we can agree. And that, finally, is the goal of these Forums.

More than 100,000 Americans will take part in this, the sixth season of the National Issues Forums. As editors of this series, we are pleased to welcome you to this common effort.

Keith Melville
Greg Mitchell
Editors-in-Chief
National Issues Forums

NATIONAL ISSUES FORUMS

1. Freedom of Speech: Where to Draw the Line

Before you read this book or attend a Forum, please fill out this short questionnaire. We're primarily interested in how you change your mind once you've learned more about the issue and had a chance to think about it. So after the Forum is over, or after you've finished reading this book, we'd like you to fill out a second short questionnaire that appears at the end of the book.

1. In general, do you think we Americans have too much freedom of speech, too little, or about the right amount?

a. Too much ☐
b. Too little ☐
c. About the right amount ☐
d. Not sure ☐

2. Indicate how you feel about each of the following statements.

	Agree	Disagree	Not Sure
a. Too much free expression and freedom of speech has caused our society to suffer from violence and spiritual and moral decay	☐	☐	☐
b. Our children are exposed to too much pornographic and violent material that is suitable only for adults	☐	☐	☐
c. No matter how offensive, free expression and freedom of speech must be defended against all forms of censorship	☐	☐	☐

3. For each of the following forms of speech or expression, indicate whether you think it should be: (1) Banned totally, (2) Shown on TV only late at night or otherwise kept from children, or (3) Not restricted at all.

	Ban totally	Keep from kids	Do not restrict	Not sure
a. Pamphlets and other writings by groups like the Nazi Party and the Ku Klux Klan	☐	☐	☐	☐
b. Violent cartoon shows for children like "GI Joe" or "Masters of the Universe"	☐	☐	☐	☐
c. Magazines like *Playboy* or *Penthouse* being sold at 7-Eleven and similar stores	☐	☐	☐	☐

4. Which of these age groups are you in?

Under 18 ☐
18-29 ☐
30-44 ☐
45-64 ☐
65 and over ☐

5. Are you a

Man ☐
Woman ☐

6. What is your zip code? _____

So that we can report what you think on this issue to local and national leaders, please hand this questionnaire to the Forum leader at the end of the session, or mail it to National Issues Forums at 100 Commons Road, Dayton, Ohio 45459-2777.

NATIONAL ISSUES FORUMS

Freedom of Speech

Where to Draw the Line

Prepared by the
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The Domestic Policy Association

The Domestic Policy Association (DPA) is a nonprofit, nonpartisan organization devoted to raising the level of public awareness and discussion about important public issues. It consists of a nationwide network of institutions — colleges and universities, libraries, service clubs, membership groups, and civic organizations — that bring citizens together to discuss public issues. The DPA represents their joint effort to enhance what they already do by working with a common schedule and common materials. In addition to convening meetings each fall in hundreds of communities in every region of the country, the DPA also convenes meetings at which it brings citizens and national leaders together to discuss these issues and the outcome of community Forums.

Each year, participating institutions select the topics that will be discussed in the issue Forums. On behalf of the Domestic Policy Association, the Public Agenda Foundation — a nonprofit, nonpartisan research and education organization that devises and tests new means of taking national issues to the public — prepares issue books and discussion guides for use in these Forums. The Domestic Policy Association welcomes questions about the program, and invites individuals and organizations interested in joining this network to write to: The Domestic Policy Association, 100 Commons Road, Dayton, Ohio 45459-2777.

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Adults should be free to participate in the marketplace of ideas. But we need to raise new barriers to shield impressionable young people from objectionable messages circulating in our society.

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Few forms of speech, even those directed primarily at children, pose a clear and present danger to our society. Speaking freely is the cornerstone of all of our freedoms, and this right should be abridged rarely, if at all.

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People disagree about the extent of the harm caused by speech, and what, if anything, should be done to restrict potentially harmful messages. The issue, however, comes down to: What do we value as a society? And what are we prepared to tolerate as a price of maintaining our freedoms?

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Too Much of a Good Thing?

> "At a time when many Americans are calling for further restrictions on various kinds of messages, it is important to reconsider what we mean by freedom of speech and where, as a society, we choose to draw the line that permits certain forms of expression and prohibits others."

In the spring of 1977, the American Nazi Party applied for a permit to conduct a march, in full uniform, through the streets of Skokie, Illinois, a suburb of Chicago. It had chosen Skokie carefully. Of the city's 70,000 citizens, nearly half were Jewish and 7,000 were survivors of Nazi concentration camps. To them, the sight of Nazi uniforms would recall unspeakable acts.

The city obtained a court order blocking the march, and then passed a series of ordinances to prevent another march a year later. But the Nazi group persisted. The American Civil Liberties Union (ACLU) helped bring the Nazis' case to federal court where a judge voided the local ordinances, ruling that the First Amendment demanded the protection of even the most extreme speech. Many of the ACLU members were outraged that the organization was defending the Nazis' right to free speech, and some 30,000 of them quit the organization in protest.

Subsequently, it became clear that only a few dozen of the self-styled Nazis had ever planned to march. Eventually, they switched the site of the march from Skokie to a public park in Chicago. Yet the event resonated across America. The Skokie march had become a symbol of the opportunities, and the burden, of the American tradition of free speech.

Should the Nazis have been allowed to march? Are there times when the dangers of permitting free speech outweigh our commitment to protecting it? This is no idle issue. Over the past few years, many Americans have become convinced that certain forms of speech should be limited or banned entirely:

- A coalition of parents' groups and educators recently mounted a nationwide campaign to remove advertisements for beer and wine from television.
- In February 1987, Representative Michael Synar of Oklahoma introduced a bill in Congress that would prohibit all advertisements for tobacco products which proponents of the bill believe cause considerable harm.
- In a 1986 report, a government commission headed by Attorney General Edwin Meese advocated strict limits on the production and distribution of pornographic material. Bowing to the pressure of groups that object to the display of sexually explicit magazines, several nationwide chains, including the 7-Eleven Food Stores and Rite Aid Discount Pharmacies, stopped carrying such publications.
- Another citizens' campaign was organized to convince the recording industry to apply "parental advisory" labels to certain rock albums.
- Watchdog groups have called for television broadcasters and cablecasters to limit the amount of violence on the air.
- In April 1987, as a result of complaints about certain radio personalities, the Federal Communications Commission issued warnings to stations about the use of crude language.
- Parents' groups, in unprecedented numbers, have acted to remove offensive books from school libraries in many communities across the country.

What is at issue in each instance — as in the efforts to prevent Nazis from marching in Skokie — is a fundamental question: What forms of speech deserve unqualified protection from the First Amendment?

Restricting Speech, Protecting Rights

There is a common impression that liberals defend untrammeled free speech and that many conservatives seek to restrict it. But the truth seems to be more a matter of whose ox is being gored. Many liberals opposed the Nazis' right to march in Skokie, and some would like to see limitations on television violence or cigarette advertising. Nothing shows so clearly that freedom of expression is not a simple ideological question as the pornography issue, where radical feminists have joined forces with conservative groups to attack a form of speech that *both* consider offensive and dangerous.

The belief that all Americans have the right to speak their minds, and hear the speech of others, is deeply ingrained. Even those who are eager to restrain certain forms of speech affirm their commitment to the First Amendment, which guarantees freedom of speech. Few people support outright censorship. For the most part, advocates of restricting certain kinds of speech want to curb the distribution of specific materials, or limit the exposure of certain groups to it.

The 200th anniversary of the signing of the U.S. Constitution provides a particularly appropriate occasion for reflecting on the rights that are guaranteed in that document. Unlike England's Magna Carta, or France's Declaration of the Rights of Man, the Constitution does more than symbolize the traditions of a nation. The Constitution is a living document, one of the most important statements of what is distinctive about American culture. Many of the principles which this nation stands for, such as the separation of church and state, and a government of checks and balances are articulated there. Of the various constitutional principles, freedom of speech is one of the most fundamental. It underlines our commitment to individual liberty, our faith in a government by and for the people.

Yet this commitment to individual freedom, and a reluctance to use the government to impose certain values or to regulate private behavior, is just one of the values Americans cherish. Another deeply rooted theme in American culture is its moralism. The United States is more traditional in its moral and religious values than most other industrial societies. These two prominent themes in American culture — an emphasis on individual freedom and a deeply rooted moralism — are often in conflict with one another.

Recall, for example, the mixed sentiments that were provoked several years ago by the discovery that a Miss America, Vanessa Williams, had posed for nude pictures. Some people were angry at Miss Williams for her unseemly behavior. Others were angry at the Miss America Committee for revoking her

Hawkins/Sygma

Ku Klux Klan member distributing racist literature tests limits of the First Amendment.

"When we permit the Ku Klux Klan to insult blacks publicly and to advocate racial separatism, do we not embolden them and their sympathizers?"

Protest against 7-Eleven store in Virginia selling *Playboy* and *Penthouse* magazines.

title. Not incidentally, *Penthouse* sold six million copies of the issue in which those pictures appeared, making it the best-selling issue in that magazine's history.

Tyranny of the Majority?

The framers of the Constitution recognized that the American Revolution owed a great deal to untrammeled free speech. When the British tried to prohibit the publication of "seditious" materials, the colonists resisted. The framers of the Constitution were convinced that speakers and writers should be free from prior restraint — that the government should not have the right to read and censor material prior to publication. Although the Founding Fathers took the right of free speech for granted, no mention of it was made in the Constitution, partly because the state constitutions already included such guarantees.

James Madison, however, worried that unless the rights of minorities were vigilantly guarded, the government would force the beliefs of the majority on everyone. These restraints to the tyranny of the majority, he argued, must be stated in the Constitution. Accordingly, when the Bill of Rights was adopted in 1791, its first concern was to guarantee freedom of speech.

The First Amendment, as written by Madison, has the brevity and simplicity of a biblical commandment. It says that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." Few words in the Constitution are so familiar, and few are so important. As legal scholar Alexander Meiklejohn once remarked, while most of the Constitution protects the people *from* the government, only the First Amendment ensures the control of the people *over* the government.

Over the past 200 years, the Supreme Court has interpreted the First Amendment on many occasions. It has extended the protection of the First Amendment to kinds of speech that the framers of the Constitution could not have imagined — including rock 'n' roll lyrics — as well as to electronic media whose influence is far more pervasive and intrusive than the newspapers and political pamphlets of the eighteenth century.

Yet freedom of speech has never been construed as an absolute right. On one occasion after another, the Supreme

Court has taken the position that the right to free speech has to be balanced against the needs of the community to maintain order.

In defense of free speech, Justice Oliver Wendell Holmes wrote an opinion in 1919 that goes to the heart of the modern interpretation of the First Amendment. "The best test of truth," he wrote, "is the power of thought to get itself accepted in the competition of the market." All ideas, he believed, should be allowed to circulate freely in the marketplace of ideas. Because most people will reject them, "bad" ideas cannot do too much harm.

But as Holmes recognized in another case decided in 1919, even a society that places a premium on free expression must limit speech in certain cases. "The most stringent protection of free speech," he wrote, "would not protect a man in falsely shouting 'fire' in a theater and causing a panic.... The question in every case is whether the words used in such circumstances are of such a nature as to create a clear and present danger that they will bring about substantive evils that Congress has a right to prevent." Several years later, in the *Gitlow* case, the Court went further than that, ruling that some speech could be prohibited if it injured the public welfare.

So speech is not an absolute right, and all forms of expression are not protected by the First Amendment. Over the years, the Supreme Court has excluded various forms of expression from the protection of the First Amendment — among them fraudulent advertising, libel, obscenity, and advocating a violent overthrow of the government.

The debate over censorship and free speech therefore involves the balancing of two considerations. On the one hand, we have a real concern that not all forms of expression should be permitted or encouraged, since some are injurious to the public welfare. On the other hand, we place a particular value on restricting authority. Once government officials or others begin to restrict certain forms of expression, other restrictions may well follow. Even if we find certain forms of expression to be personally offensive, it is not necessarily a good thing to have them censored, for censorship, as the experience of other nations shows, can be contagious.

Drawing the Line on Free Speech

As illustrated by the various cases in which the courts have interpreted the First Amendment, people differ about how to reconcile the principle of free speech with other social needs. They differ in their judgments about the social danger caused by certain kinds of messages. They differ about whether the purported sources of harm — certain magazines, TV commercials, radio commentary — should be banned. And they differ about how much of a threat is posed to free expression when the government restricts any kind of message.

By and large, the debate over free speech takes place among

Obscenity and the Court

For more than 30 years the Supreme Court has tried to distinguish the obscene from the merely offensive. In 1957, in *Roth* v. *United States*, the Court held for the first time that "obscenity is not within the area of constitutionally protected speech or press." Justice William Brennan, Jr. ruled that material that is "utterly without redeeming social importance" is not protected by the Constitution.

In recent years, the ruling with the greatest impact was a 1973 decision in a case called *Miller* v. *California*. The Court decided that the material was obscene, and thus could be banned, if it described patently offensive sexual conduct, if it lacked "serious literary, artistic, political, or scientific value," and if the average person, "applying contemporary community standards" found it to be prurient. The so-called "community standards" test meant that the definition of obscenity could be determined locally, and by juries rather than by judges. Works deemed harmless in one area could be prohibited in another.

Miller is a powerful tool for restraining offensive speech, and many people feel that the only problem with the ruling is that it is not employed enough. Law enforcement authorities in most states and cities often consider obscenity cases a waste of precious manpower. Some people feel that even *Miller* does not go far enough. They would ban *anything* even vaguely pornographic, whether it has "artistic" value or not. Some localities have tried to ban all sexually explicit expression.

On May 4, 1987, the Supreme Court refined the *Miller* ruling. Left standing was the notion that juries could determine whether material was prurient using the yardstick of "community standards." However, by a 6-3 vote, the justices said that juries, in considering the question of whether the material has "serious literary, artistic, political, or scientific value" have to broaden their scope beyond their own community. They are supposed to consider how a "reasonable person" in American society would judge the value of the work in question, taken as a whole.

Those who have criticized the *Miller* ruling for encouraging the possible establishment of hundreds of different standards on obscenity around the country saw some good in the latest "reasonable person" ruling. In local obscenity cases, they said, the defense attorneys might now be able to present testimony from experts outside the community on the artistic or social value of a particular work. But most civil libertarians continue to oppose all obscenity laws on principle. The three justices who dissented in the "reasonable person" case said that all laws that "criminalize the sale of magazines to consenting adults who enjoy the constitutional right to read and possess them" are unconstitutional.

WARNING... VIEWERS MAY FIND SOME OF THIS MATERIAL TOTALLY OFFENSIVE
SOME VIEWERS MAY FIND ALL OF THIS MATERIAL OFFENSIVE
BUT SOME VIEWERS WON'T FIND ANY OF THIS MATERIAL OFFENSIVE AT ALL

Drawing by Levin; © 1979 The New Yorker Magazine, Inc.

the proponents of three distinctly different views, and it is these views that frame our discussion.

Those in the first group say that the balance has swung too far toward unlimited freedom. Words and pictures, say the proponents of this view, can cause serious harm—physical, moral, and social. Some people who share this view would remove certain magazines from stores and some commercials from television. Others would stop Nazis or Ku Klux Klansmen before they reach the podium. Although these people differ on what kinds of speech should be curtailed, they all agree that some additional restrictions on freedom of expression are appropriate.

Proponents of a second point of view hold that adults need not be protected from controversial or offensive images. But they are concerned about the effects of certain materials on minors. The "marketplace of ideas," they say, is intended for adults who have the judgment not to be swayed by extremist rhetoric, prurient stories, or blatant stereotypes. There are few forms of speech which advocates of this view would ban outright. To them, the only appropriate action for government is to erect certain barriers so that young people are not exposed to objectionable messages.

A third group would apply Justice Holmes' "clear and present danger" quite strictly. Even forms of expression that many people find offensive must be tolerated — not only to allow us to test our own ideas against them in the marketplace, but because every instance of censorship threatens the principle of free speech. Their solution to the problem of offensive ideas is to combat them with preferred ideas — let them compete in the marketplace. More speech, they conclude, is always better than less. Government interference must be kept to a minimum.

Many people who would provide absolute protection for certain kinds of speech — such as political ideas — feel differently about other kinds of speech, such as sexually explicit magazines or ads for products that may pose a health hazard. The debate about free speech raises questions about what kinds of expression should be protected, and which do not deserve the protection of the First Amendment. If advertisements for products that are *physically* harmful, such as cigarettes, are banned, for instance, wouldn't we also be justified in prohibiting ads for products that some people feel are *morally* harmful?

Your conclusions about where the line should be drawn on free speech depend in part on how you feel about a range of other concerns, such as public health, the role of the government, and artistic license. As we explore the debate on the First Amendment we will discuss many topical issues and controversies, and how they are regarded by advocates of each of our three approaches.

At a time when many Americans are calling for further restrictions on various kinds of messages, it is particularly important to reconsider what we mean by freedom of speech, and where — as a society — we choose to draw the line that permits certain forms of expression and prohibits others.

Clear and Present Danger

> "Many people are convinced that some forms of expression cause physical, moral, and political harm to individuals and to society as a whole. They believe that the problem is so serious that new restrictions must be placed on certain kinds of speech."

Several years ago the National Federation for Decency called for a nationwide boycott of the 7-Eleven chain whose 7,600 stores sold, among other publications, *Playboy*, *Penthouse*, and *Forum*—magazines which feature sexually explicit articles and photographs. It was, said a federation official, a way of "dealing with pornography by attacking it in the family marketplace." Activists picketed stores in various communities. These actions culminated in a Labor Day, 1985 demonstration at the Dallas headquarters of Southland Corporation, the company that owns 7-Eleven.

Southland declined to respond to the protest until a federal commission headed by Attorney General Edwin Meese III sent a letter to 28 companies—Southland included—asking for an explanation of their alleged involvement in the sale of sexually explicit material. On April 1, 1986, Southland instructed its company-owned stores to cease carrying *Playboy*, *Penthouse*, and *Forum*. Other chains, including Rite Aid, followed suit.

Those who participated in the campaign against 7-Eleven say that they are concerned about the welfare of their communities. They believe that sexually explicit materials, which are now widely available, cause an erosion of moral standards and encourage criminal acts.

At first glance, the people who campaign to have sexually explicit magazines removed from local convenience stores may appear to have little in common with people who advocate other kinds of restrictions on free speech, such as a prohibition on advertisements for tobacco products. But no matter what the specific cause, many people, across the political spectrum, are convinced that certain forms of speech cause harm to individuals and to society as a whole. They believe that the problem is so serious that new restrictions must be placed on certain kinds of speech. They are convinced that this can be done without jeopardizing the right of free expression guaranteed by the First Amendment.

Reasons for Restraint

People who take this view are concerned about the pervasiveness of different types of messages that either didn't appear at all in the past, or at least didn't arrive unbidden in most people's homes.

Consider the images that bombard Americans on a typical day. Violence, murder, and adultery are now routinely portrayed on prime time television programs. Those who watch daytime talk shows are often exposed to members of political fringe groups and bizarre cults. Newspapers, magazines, and billboards display advertisements featuring attractive models who promote the use of alcohol and cigarettes. Some of the most prominent radio personalities seem to specialize in ribald language and ethnic slurs. Magazine stands display row after row of publications featuring explicit sex. Main Street, it seems,

Sudhir/Picture Group

In the downtown areas of many cities it is hard to avoid offensive images.

is coming more and more to resemble Times Square. What is notable by its absence is a sense of restraint.

People who argue for new restrictions are convinced that there is a connection between the proliferation of these types of messages and the growing incidence of crime, violence, divorce, drug and alcohol abuse, and disrespect for authority. They feel that sexually explicit material, advertising for alcohol and tobacco, excessively violent television programming, and particularly vicious political speech, should be treated not as legitimate forms of expression but as messages that should be strictly limited.

When it is determined that certain products available in the marketplace are harmful—asbestos, for example, or a drug like thalidomide—the government steps in to restrict or forbid its sale. Why, people who take this view ask, should the same not be true of certain kinds of speech?

Those who favor additional restrictions on some types of expression recognize that the First Amendment surrounds speech with special safeguards. But, they point out, those protections are scarcely absolute. In the case of libel or perjury, the potential harm or danger is sufficient to convince the courts to forbid such speech. The courts have approved a whole series of restrictions on free speech: obscenity statutes, anti-sedition laws, and federal regulation of the mass media, to name just three. Few Americans seem to object to the fact that cigarette and liquor commercials can no longer be aired on television and radio.

Recalling Justice Holmes' "clear and present danger" criterion, people who hold this view argue that if certain kinds of speech increase the incidence of violent crime, or pose threats to our moral, physical, or political well-being, then such speech must be restrained. The harm, in this view, need not be as palpable as the danger posed by a man who shouts "fire" in a crowded theater. The Supreme Court has ruled that "the interest of the public in the quality of life, the total community environment, the tone of commerce . . . and the public safety itself" are legitimate reasons for restraint.

Threats to Our Health and Safety

The premise of this view is that speech matters. Words and images shape attitudes, which in turn shape behavior. Just as good speech can have good effects, bad speech can have bad effects. The proponents of various kinds of restrictions on speech insist that there is clear evidence of the harm of certain kinds of messages.

Consider, for example, the *physical* harm caused by certain messages. Many of the tobacco ads that appear in magazines and newspapers feature healthy, attractive young people swatting a tennis ball or riding horses across the countryside. Yet, in the words of Elizabeth Whelan, executive director of the American Council on Science and Health, "these ads, which total over $1.5 billion in expenditures each year, are promoting a product that is our nation's leading cause of premature death,

accounting for over 350,000 fatalities each year." Recent research shows that cigarette smoke is harmful to smokers and nonsmokers alike. To encourage smoking by allowing such ads, in this view, is to contribute to a public health menace.

Similar ads glamorize alcohol consumption and thus promote it. Television commercials depict former ballplayers whooping it up in a bar, ready to down an ice-cold brew. Yet alcohol abuse kills over 100,000 Americans each year, and drinking is linked to a high percentage of violent crime. Drunk driving causes nearly half the fatalities on our highways and is the principal cause of death among people ages 16 to 24. The National Council on Alcoholism reports that alcohol abuse represents an economic burden to the nation of more than $116 billion. Yet, as Elizabeth Whelan observes, "virtually every imaginable form of marketing hype is tapped to get Americans, especially young people, to drink more."

People who advocate restricting sexually explicit messages are similarly concerned about the physical harm it causes. The Meese Commission concluded in its 1986 report that the available research shows "a causal relationship between exposure to [sexually violent material] and aggressive behavior towards women." Various studies show that males who view violent pornography become more tolerant of acts of violence toward women. The commission also found that the availability of sexually explicit material has "accelerated dramatically" in recent years. New forms of such expression, including "dial-a-porn" telephone services and *X*-rated videocassettes, have proliferated. The commissioners were particularly concerned about the fact that sexually explicit material has become more hardcore, more violent.

The Threat to Morality

Many people are no less worried about the moral dangers than they are about the physical threat posed by certain kinds of messages. The members of the Meese Commission expressed as much concern about the moral effects of pornography as they did about the violent behavior encouraged by such material. At the commission's final session, one of its members, social scientist Dr. Park Elliot Dietz, said that "according to my values, these [sexually explicit] materials are themselves immoral, and to the extent that they encourage immoral behavior they exert a corrupting influence on the family and on the moral fabric of society.... " When he finished his statement, several of his fellow commissioners applauded.

People who take this view tend to be especially concerned about the content of the electronic media, in part because of the wide audience television and radio enjoy. A politically extreme or pornographic magazine is typically seen by no more than a few thousand people. But a prime time television show or a film on Home Box Office which contains extremely violent acts typically reaches millions of viewers.

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Anybody Got a Cigarette?

A number of individuals and organizations are presently calling for a total ban on tobacco advertising and the removal of wine and beer commercials from radio and television. Advocates of new restrictions on the promotion of products that may be harmful to health have a firm precedent.

In 1964, the U.S. Surgeon General issued a historic report on smoking that labeled cigarettes a serious health risk. The report linked smoking to heart disease, lung cancer, and emphysema. In response, the government ordered that cigarette packages carry the now-familiar Surgeon General's warning that smoking might be hazardous to health. The Federal Communications Commission, charged with ensuring that the public airwaves serve the public interest, took an additional step. The FCC ordered stations to run public service "smoker education" ads. Starting in 1967 one antismoking commercial was aired for every three cigarette ads.

The commission proposed a total advertising ban in 1969, arguing that cigarettes posed a unique health danger "measured in terms of an epidemic of deaths and disabilities." Cigarette advertising, antismoking activists argued, could not be simply restricted to those hours when minors watch TV or listen to the radio, because young people watch television and tune in to the radio at all hours. Tobacco industry lobbyists opposing the prohibition said that neither Congress nor the FCC had the right to "prohibit nondeceptive advertising of a lawful product." In singling out cigarettes for an unprecedented advertising ban, they said, the government, in effect, would be a censor, abridging the guarantees of the First Amendment.

By early 1970 the debate was over. Congress, with its Public Health Cigarette Smoking Act, mandated a total ban on tobacco ads on radio and television. Running commercials that promote "this unique danger," Congress said, "is inconsistent with the obligation imposed upon the broadcaster" to operate for the public good.

"People who argue for new restrictions are convinced that there is a connection between the proliferation of certain messages and the growing incidence of crime, violence, divorce, drug and alcohol abuse, and disrespect for authority."

The electronic media are not only more ubiquitous than the print media, they are more intrusive. Television messages come right into the home, and in many homes the television set is virtually a constant presence. Because the average American watches about four hours of television a day, the medium's images and values — moral and political — become part of the fabric of our daily lives.

Various groups have petitioned the TV networks to reduce the amount of violent programming the networks air. According to one such group, the National Coalition on Television Violence, the average American views eight to ten hours of violent programming per week. What is the danger of this? "Because of TV, we've become quite used to murder," says James Alan Fox, a Northeastern University researcher. "By repetition the viewer becomes desensitized to it. It's less of a taboo. In a sense, prime time has unleashed a permit for murder."

Subjects such as drug use, rape, and abortion, that were considered off-limits just 20 years ago, are now presented routinely on television. Adultery is one of the most common themes of afternoon soap operas and nighttime series such as "Dynasty" and "Dallas." The *New York Times* reported in April 1987 that sexual topics are being discussed "more freely and openly" than ever before on network television.

One of the most dramatic disputes in recent years over media content erupted over what columnist George Will derisively calls "the condomization of television." Until recently the networks generally refrained from mentioning birth control, and they refused to carry ads for birth control devices, on the ground that many viewers would be offended by such references. Concern about AIDS, however, and recognition that the use of condoms may serve as some protection against its spread, has prompted a number of officials, including Surgeon General C. Everett Koop, to urge the networks to relax the ban. The networks have responded by including discussions of the health benefits of using condoms on a number of prime time shows. Meanwhile, a growing number of local stations, as well as newspapers and magazines, have begun accepting condom ads.

This has triggered an angry debate about whether such ads should be aired. Many people are convinced that ads for any kind of birth control method encourage promiscuity and usurp the role of the family, and thus pose a threat to our values.

The Political Threat

In addition to the physical and moral harm it causes, advocates of this position are convinced that unrestrained speech poses a political danger as well. When we permit the Ku Klux Klan to insult blacks publicly and to advocate racial separatism, do we not embolden them and their sympathizers? To permit someone to speak is to say, at the very least, that that person's message deserves the respect of being heard. Impressionable people may thus be more inclined to accept such extreme political ideas, or

even commit acts of violence such as those advocated by some extremist groups.

Those who argue for restraints on certain kinds of political speech insist that all views and opinions are not equal. Some speech, in fact, reflects a totalitarian or fascist viewpoint that would deny free-speech rights to others. For our own protection, these views should be stifled or restrained, they believe.

At the time of the Skokie controversy, columnist William F. Buckley, Jr. wrote that while the Nazis were unlikely to gain converts, "there is that other consideration that little tyrants — sometimes overnight — become big tyrants. The moral is that little boys should not be given dangerous toys." The First Amendment soapbox can be a dangerous weapon for those whose message is irresponsible or reprehensible, particularly when such people use the electronic media to reach a mass audience. When the Klan holds a local rally, the turnout is typically quite small. But when Klansmen appear on the "Donahue" or "Oprah Winfrey" television shows, their message reaches an audience of millions.

Strong Medicine

Those who hold this view do not necessarily agree about which kinds of speech are harmful. Some, for example, are not particularly concerned about violence on television, but they would like to see sexually explicit material taken off magazine racks. Others feel that extremist political groups should be allowed to broadcast their views but they favor prohibitions on cigarette and alcohol advertising.

What unites these individuals, however, is that they all share Justice Holmes' view that strict limits on freedom of expression are warranted whenever free speech represents a "clear and present" threat to our physical, moral, or political well-being.

Advocates of this view reject the view of civil libertarians that every restriction on speech invites further restrictions and diminishes the variety of opinions expressed in the political marketplace. Commercial and pornographic speech make no contribution to informed debate, they believe, so we lose nothing by restricting them. Some political speech deserves to be put in the same category. The objective of the Nazi march in Skokie, for example, seemed to be to cause maximum disruption and outrage. In that case, wrote political essayist Garry Wills, the relevant body of law was "not the First Amendment but the nuisance statutes." The Nazis, in his view, were doing little more than "broadcasting an obscene phone call to a whole neighborhood. . . . "

Opponents of tobacco and alcohol advertising would like to legislate such expression out of existence, while continuing to allow the sale of such products. Cigarette commercials and ads for hard liquor, they point out, have already been banned from television and radio, so a principle has been established.

AP/Wide World Photos

"Miami Vice" regularly rolls out the heavy artillery on TV.

TV Violence: The Top 20

Listed below are the most violent shows to appear on network television during the 1986-1987 season, based on monitoring conducted by the National Coalition on Television Violence (NCTV). NCTV defines violence as the "deliberate and hostile use of overt force," or the direct threat of coercion by one person against another person.

PROGRAM	VIOLENT ACTS PER HOUR
1. SLEDGE HAMMER! (ABC)	58
2. A-TEAM (NBC)	56
3. SPIDERMAN (cartoon) (NBC)	49
4. BUGS BUNNY LOONEY TUNES (cartoon) (ABC)	48
5. MR. T (cartoon) (NBC)	46
6. SIDEKICK (ABC)	43
7. SPENSER FOR HIRE (ABC)	42
8. NEW MIKE HAMMER (CBS)	36
9. DROIDS (cartoon) (ABC)	36
10. MIAMI VICE (NBC)	35
11. CRIME STORY (NBC)	34
12. REAL GHOSTBUSTERS (cartoon) (ABC)	32
13. SUPER POWERS (cartoon) (ABC)	31
14. SIMON & SIMON (CBS)	28
15. MAGNUM P.I. (CBS)	27
16. LAZERTAG ACADEMY (NBC)	27
17. DOWNTOWN (CBS)	25
18. MACGYVER (ABC)	24
19. EWOKS (cartoon) (ABC)	24
20. THE WIZARD (CBS)	22

© Jacques Chenet

***X*-rated movies are now readily available at video stores in local communities.**

"Violence, murder, and adultery are now routinely portrayed on prime time television programs."

Faced with the accumulating evidence about the hazards of smoking and alcohol consumption, why should we hesitate to extend that prohibition to magazines, newspapers, and billboards?

With regard to the spread of pornography, advocates of this view insist that law enforcement officials must do a better job of enforcing obscenity laws. Pornography has spread despite the existence of obscenity laws in most parts of the country. Although the Supreme Court has had trouble reaching a clear definition of obscenity, the Court has never extended the protection of the First Amendment to obscene materials. The problem is that the obscenity laws are only rarely enforced. Federal laws prohibit the mailing of obscene materials, or their transport across state lines. Yet federal officials in most cases make few efforts to identify and prosecute individuals who manufacture and transport such material. People who take this view insist that officials must aggressively prosecute those who produce and distribute sexually explicit material.

Going Overboard?

Critics of this view are concerned about the methods used by people who object to certain kinds of messages. They believe that these messages are essentially harmless. Most of all, they are concerned about what overzealous censors could do to the very principle of free speech.

Many critics of this first view feel that letter-writing campaigns and citizen action groups smack of intimidation. ACLU lawyer Barry Lynn characterizes such pressure groups as "vice vigilantes." Their success often depends on the sensitivity to public opinion felt by television networks or business firms such as Southland, who are likely to shy away from controversy or adverse publicity. Other communicators can be expected to follow, producing what is known as a "chilling effect" — an atmosphere in which artists, speakers, and political figures muzzle *themselves* rather than face the consequences of delivering an unpopular message. This amounts to self-censorship, whose results, critics feel, are little different from those of official censorship.

There is lively debate, too, about the harm caused by offensive materials. A presidential commission on pornography that was named by President Johnson in 1968, for example, concluded that there was no evidence "that exposure to explicit sexual materials plays a significant role in the causation of delinquency or criminal behavior among youth or adults." A 1985 report by the Canadian government found that social science research on the effects of pornography was so "contradictory" and "chaotic" that no firm conclusion was possible.

Civil libertarians generally oppose obscenity laws, which are often based on judgments about "community standards." All speech, they believe, must be protected from the tyranny of the majority. Moreover, they argue, how are local and state

judges and government officials to come up with reasonable definitions of obscenity? Fifty years ago James Joyce's novel *Ulysses* was banned as obscene. Today, it is generally regarded as one of the great literary works of the century. Justice Potter Stewart defended his ability to identify pornography by saying, "I know it when I see it" — but so did the judges who banned *Ulysses*.

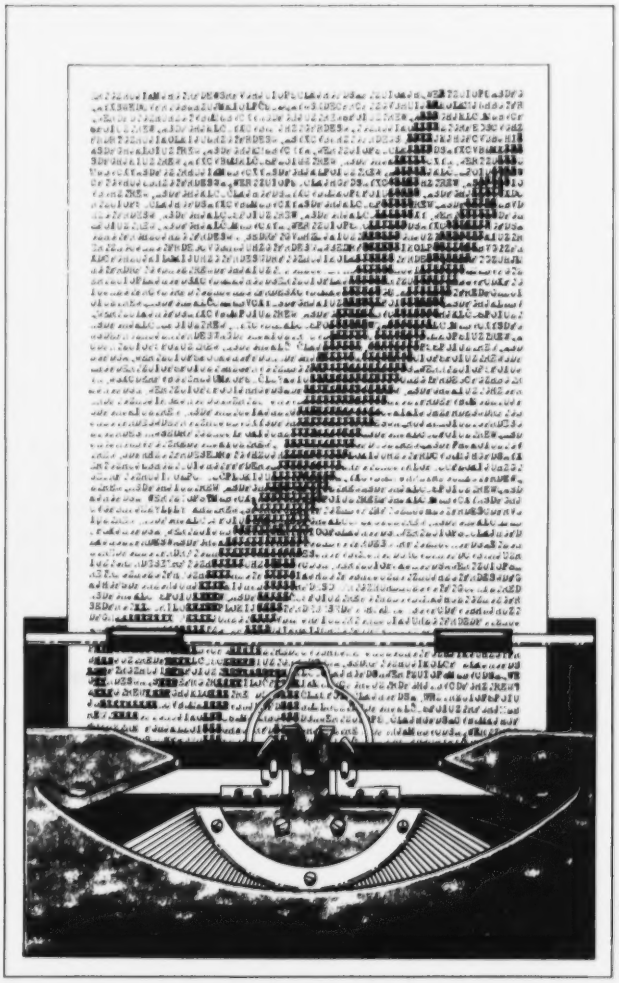
Few people outside the tobacco industry dispute the U.S. Surgeon General's finding that tobacco is directly linked to lung cancer and other illnesses, but does advertising increase the amount of smoking? Industry representatives say that the purpose of advertising is to increase brand-loyalty and promote brand-switching rather than to increase consumption. Lobbyists for the tobacco industry point out that in nations where cigarette advertising has been banned, the number of smokers has not declined. In the United States, on the other hand, where cigarette advertising has increased over the past decade, the smoking rate has declined.

Critics of this first approach to freedom of expression also pose the following question: *Who* decides what type of speech represents a clear and present danger? If the major share of that responsibility passes from the individual to the government, they warn, then the First Amendment, which was designed to promote personal sovereignty, will be stood on its head.

Moreover, abridging one type of speech threatens others. "Once the freedom of one group is abridged," ACLU director Aryeh Neier has said, "that infringement will be cited to deny the rights of others." Many people worry that the moment it becomes acceptable to restrict "offensive" speech, whether by citizen pressure or through legislation, no form of expression — indeed, none of our constitutional rights — will be safe. They concede that many messages are offensive and that words and pictures *can* hurt, but the sting is one that we must put up with as the price of living in a democratic society.

Proponents of restricting extremist rhetoric, pornography, or the advertising of harmful products, however, feel that matters of life and death, as well as the moral health of a society, are at stake. These dangers are *real*. Potential loss of the more abstract right of free expression is thus a chance well worth taking. One restriction on free speech, in any case, does not necessarily lead to another. Even if further curbs on tobacco advertising were enacted, for example, "the notion that Congress is going to go on a rampage and start suppressing all kinds of advertising is just ludicrous," says Henry Paul Monaghan, a professor at Columbia University Law School.

There is an alternative to the all-or-nothing approach, however. Speech can be regulated to protect its most vulnerable victims without being rolled back altogether. Much of the free-speech debate concerns the effects of ideas and images on children. Some people would seek to cushion that effect, without causing undue harm to the First Amendment. It is to this point of view that we now turn.



Mirko Ilic

"Critics charge that abridging one type of speech threatens others. All speech, they believe, must be protected from the tyranny of the majority."

Spare the Children

> "Adults should be free to participate in the marketplace of ideas. But we need to raise new barriers to shield impressionable young people from objectionable messages circulating in our society."

On September 19, 1985, the Senate Committee on Commerce, Science, and Transportation held an unusual hearing on the topic of rock music. After the wife of Treasury Secretary James Baker told the committee about the proliferation of songs glorifying violence and the occult, a consultant to a group called the Parents Music Resource Center (PMRC) presented a slide show featuring pictures of several teenage boys who killed themselves while listening to a song about suicide called "Shoot to Thrill."

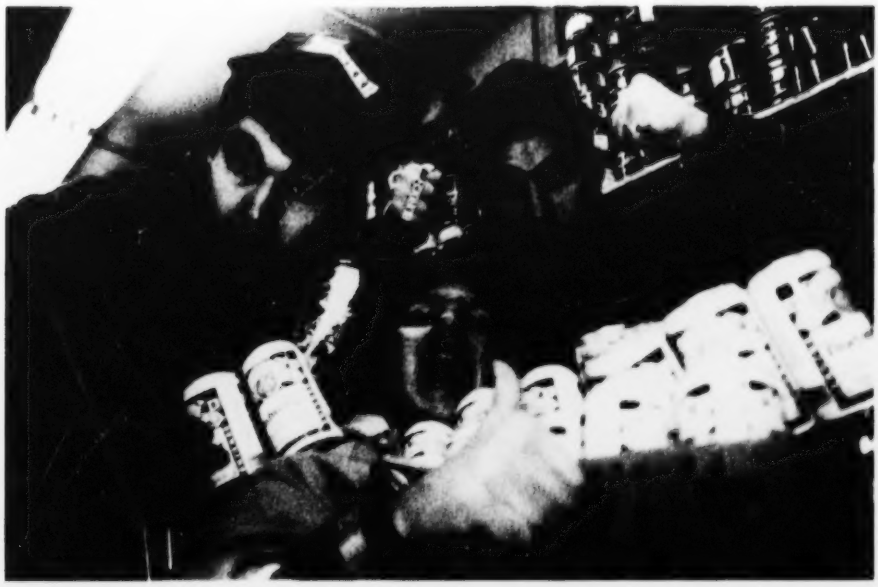
The PMRC was careful to state that it did not propose to ban offensive songs. The group's objective was to persuade the record industry to adopt a system of ratings comparable to those used by the movie industry, and to attach warning labels on records containing particularly offensive lyrics.

"There is a difference," said PMRC founder Tipper Gore, "between wanting to restrain and control and wanting to suppress and censor." Many people who share her view of the issue agree that prohibiting offensive or potentially harmful messages is not a good idea. Nonetheless, they are convinced that certain barriers should be erected so that youths are not exposed to objectionable messages. For this reason they would make certain demands of the speaker or the distributor — in the form of labels, ratings, warnings, and restrictions on display. But they would leave the speech itself untouched.

This is not, of course, a new approach to the issue of free speech. For years, some people have advocated what amounts to a double standard on freedom of expression — one standard for youths, another for adults. Today this attitude is manifested in a variety of restrictions that receive popular support. The movie rating system, for example, takes into consideration the possible effect of strong language and graphic violence on young people, and it requires theaters to bar children from seeing certain movies. Similarly, in most parts of the country, youths under the age of 18 are not allowed inside "adult" bookstores that sell sexually explicit materials. And the Federal Communications Commission has banned the use of foul language on radio as well as discussion of certain sexual subjects when young people are most likely to be listening.

Those who advocate this second approach would apply additional restrictions of this type to combat what many people see as a rising tide of harmful speech that threatens the well-being of young Americans. As in the previous chapter, we will first examine the extent of the danger, as perceived by the advocates of this second choice, and then consider how they propose to alleviate the problem.

What we most need to be concerned about as a society, as proponents of this approach see it, are certain maladies that seem to afflict a disturbingly high percentage of children and teenagers today. The suicide rate for people between the ages of 16 and 24 has tripled over the last 30 years. The teenage pregnancy rate in America — more than 10 percent of all teenage girls become pregnant at least once — is higher than in any other



Glen E. Friedman

In several cities parents have protested to force groups like the Beastie Boys, shown here, to clean up their act.

industrial nation. One in seven high school students will never be graduated. There are half a million admissions to juvenile corrections facilities every year. And teenage drug abuse is rampant.

While this disturbing litany has much to do with poverty, indifferent parents, and poor schools, part of the problem can be traced to the values and attitudes of the younger generation. A principal source of these values, according to those who argue for stricter controls, is the TV programming, music, magazines, and books to which young people are exposed.

Those who favor this second approach make a critical distinction. The First Amendment, they say, is based on the idea that adults can and will make certain judgments about what they see and hear, and thus separate what is meritorious from what is meretricious. But it cannot be assumed that minors will be able to make such judgments. Children are impressionable. Because their knowledge and experience is limited, it is difficult for them to distinguish false claims. They are inclined to believe what they hear. Even the best parental training is at times overwhelmed by the messages contained in the media. From this view, bad ideas or patently offensive messages do not pose a real threat to adults, but they do present a clear danger for youths.

While the Constitution is silent on the question of the treatment of minors, the law has long recognized that children may be prevented from exercising some freedoms for their own good. Children, for example, are not allowed to buy beer and hard liquor, on the grounds that the decision to consume such products requires adult judgment. Proponents of our second view hold that young people should likewise be protected from messages that pose a threat to their moral and social values and their physical well-being.

The Barrage of Images

From this view, one of the leading culprits is television. Most parents worry at some point about the effect of television on their children. Considering that school age children watch, on the average, about four hours of television a day, parents have reason to be concerned. Because television is a story-telling medium, children absorb its lessons unwittingly.

People who take this perspective are particularly concerned about TV's portrayal of violence. Many social scientists believe that television depicts murder and other violent attacks so often and so casually that children become progressively "desensitized" to violence. Over time, aggression begins to seem a natural way to solve problems. "Using violence as a means of fantasy entertainment," says Dr. Robert E. Gould of the National Coalition on Television Violence (NCTV), "is a bad idea even for normal adults and still worse for children and adolescents." Many studies have linked television viewing to increased aggressive and violent behavior.

What particularly concerns those who favor this second approach is that children's programming contains four to five times as many violent acts per hour as adult programming. Cartoons are among the most violent programs of all, says the NCTV. Peggy Charren, founder of a group called Action for Children's Television, describes TV cartoons as "an animate

Mattel Toys

HeMan (right) lectures his cartoon audience on fair play — but uses violence to get his way.

Children's TV: More Harm Than Good?

"HeMan," a popular syndicated cartoon show, has been praised for presenting pro-social themes to children. Each episode ends with a 90-second lecture on topics taken up in the show, such as "be kind to animals" or "play safely near water."

But television monitoring groups assert that despite HeMan's thoughtful super-heroism, the show is very violent. The National Coalition on Television Violence reports that parents and teachers are concerned that youngsters are learning from HeMan that it is all right to behave aggressively. Though he is labeled the good guy, HeMan nearly always crushes evil through force, showing that enemies need not be given respect or consideration, according to these groups. HeMan's use of violence to solve conflicts may be especially influential on children, says NCTV, because he is "such a clean-cut and popular hero."

Here is a summary of a typical episode of "HeMan," outlined by NCTV:

DREE ELLE'S RETURN: Two "bad guys," Trap Jaw and Clawful, steal the Horn of Evil and blow it. The good Sorceress fights the "evil" by shooting at it. A character named Orka steals the horn for the good guys. The bad guys catch and gag Orka. Teela, a female hero, flips Trap Jaw. Teela fights evil robots with her sword and Orka defeats them with a magnet. HeMan punches Clawful across the room and picks him up and throws him against a rock. HeMan shoves a giant fist into the ground. Then HeMan breaks the evil spell by blowing into the large end of the horn. At the end of the episode Orka lectures about the danger of playing with knives, matches, and tools. This episode depicts 27 violent acts, according to the NCTV.

world of meanness and mayhem." Such shows as "G.I. Joe" or "Masters of the Universe," she says, function as violent commercials for violent products.

Just as children are more susceptible to the message of programs than adults, they are also more susceptible to advertising messages. Thus, advertisements for potentially dangerous products like alcohol or tobacco pose a special danger to minors. To be sure, ads for beer and wine are not aired during the "children's hour," but children and teenagers spend a lot of their viewing time watching adult programs. "A child will see alcohol consumed an average of 75,000 times on TV before he or she is of legal drinking age," says Dr. Thomas Radecki, NCTV chairman. Much of the debate over condom ads, or references to condoms in television programs, is animated by the fear that some young people will conclude from these references that sex is a matter of health and hygiene rather than morals.

People who share this second view are also concerned about music videos such as those shown on the MTV cable channel, most of whose viewers are teenagers. An NCTV study found that 44 percent of all music videos contained violence or suggestions of violence, including "a portrayal of hatred and intense violence between the sexes as being commonplace and acceptable."

Another area of concern for those who favor this approach is rock 'n' roll lyrics. Parents have worried about rock 'n' roll's subversive potential since the genre took root more than 30 years ago. What has changed is that rock music, like pornography, has become more hard-core; the extreme has become ordinary. "Today," PMRC's consultant Jeff Ling told the Senate committee, "the element of violent, brutal erotica has exploded in rock music in an unprecedented way." In Ling's view, it is not coincidental that the teenagers who are the chief audience for rock music have been committing suicide far more frequently than teenagers did in the past. Many of the 6,000 youths who commit suicide every year, said Ling, "find encouragement from some rock stars who present death as a positive, almost attractive alternative." A popular singer named Ozzie Osbourne recently released a song called "Suicide Solution."

Those who favor restrictions on speech harmful to minors are also concerned about their exposure to sexually explicit materials. Though "adult" bookstores are off limits to teenagers, people who take this view point out that children need only walk into a magazine or convenience store to see, and leaf through, sexually explicit publications. The "blinder racks" that many stores began to use in response to public pressure or local ordinances provide only a minor deterrent to curious adolescents. Many video stores display a wide range of *X*-rated films, as well as such violent fare as the *Faces of Death* series, which features scenes of electrocutions, shark attacks, and air-crash carnage. Compliant owners of magazine and video stores

are often willing to rent or sell erotic material to minors despite local ordinances that may outlaw it.

Speaking to this issue, the Meese Commission concluded that soft-core magazines that present nude photographs can be as harmful as hard-core pornography, though in a more subtle way. In the words of the commission's report, "for children to be taught by these materials that sex is public, that sex is commercial, and that sex can be divorced from any degree of affection, love, commitment, or marriage is for us the wrong message at the wrong time."

Whether the topic is TV fare, song lyrics, or sexually explicit magazines or videotapes, the central concern is that the values of American children are being corrupted by many of the messages they take in.

Modest Solutions

What action is advocated by people who hold this second view? The chief remedy they propose is to erect certain barriers to shield impressionable juveniles from offensive and potentially harmful messages. The measures they favor would regulate who is allowed to see and hear certain messages, but they would not prohibit the production of offensive or potentially harmful messages.

Few people, for example, propose that J.D. Salinger's *Catcher in the Rye*, Mark Twain's *Huckleberry Finn*, or Kurt Vonnegut's *Slaughterhouse Five* be banned. But parent groups all over the country have agitated to have these and other books, which are considered to be morally unsound or dangerous, removed from the shelves of school libraries. Some cases involving library books have divided communities and provoked controversy. One case went all the way to the Supreme Court, which ruled that the board of education in Island Trees, New York, acted improperly in removing such books as Eldridge Cleaver's *Soul on Ice* and Desmond Morris's *The Naked Ape* from school library shelves.

In the view of those who favor careful monitoring of books stocked in school libraries, the fact that a particular book has been critically acclaimed does not mean that it is suitable for young people. For example, one book that parents have sought to remove from school library shelves is Alice Walker's *The Color Purple*, which won a Pulitzer Prize. Parents claim that it contains objectionable sexual material.

Just as there is widespread concern about which books juveniles should be allowed to read, there is also widespread concern about what they should be allowed to see and hear in the electronic media. Because television comes directly into our homes, it is more intrusive and potentially more influential than books or magazines. For that reason, it is also more difficult to protect young people from programming which is not appropriate for them.

Broadcast television and radio have been held to stricter

Charles Harbutt/Archive Pictures, Inc.

Most children are exposed to television images at least four hours every day.

"Children are impressionable. Because their knowledge and experience is limited, it is difficult for them to distinguish false claims. They are inclined to believe what they hear."

Movie Ratings: "An Early Warning Signal"

In the 20 years that *G, PG, R,* and *X* have tagged most American movies, audiences have come to expect and accept these ratings. Polls show that most parents continue to find classifications useful when judging which movies their children may see. Few consider the ratings a form of censorship.

The Rating Board of the film industry's Classification and Rating Administration does not review movies for quality. That task, says Rating Board Chairman Richard Heffner, is left to the critics and to the public. *G, PG, R* and *X* are, rather, "age-specific" grades determined by the theme, language, and amount of nudity, sex, drug use, and violence in each film. "We don't approve or disapprove of films," says Heffner. "Our main objective is to provide an early-warning signal to parents, who may then exercise their own responsibility to expose their youngsters to more mature film content only as they individually mature."

Movie studios and producers voluntarily submit nearly 400 films a year for a CARA classification. "Nothing," says Heffner, "is banned by our system or refused a rating." After viewing and discussing a movie, the board determines, by majority vote, which rating to apply. "We make an educated guess as to what most parents of children under 17 will feel a film's rating should be," explains Heffner. With the exception of the *X* rating, however, children cannot be kept from seeing a film because of its rating. And for people over 17, the ratings are inconsequential. The ratings:

G: "General Audiences — all ages admitted."

In the Rating Board's view, a *G* film does not take up a theme or contain language that would offend most parents of younger children who watch the film. Drug use, sex, and nudity are not depicted. Violent content is minimal.

PG: "Parental Guidance Suggested — some material may not be suitable for children."

The Board believes parents may judge some material to be offensive. Drug use and explicit sex are absent. There may be some use of profanity and mild violence, and perhaps, a small amount of nudity.

PG-13: "Parents Strongly Cautioned — some material may be inappropriate for children under 13."

Cousin to the *PG* rating, this was added by CARA three years ago. In addition to the *PG* rated content, *PG-13* films may contain harsher, sexually derived swear words.

AP/Wide World Photos

***R* ratings restrict admission — but not many people seem to mind.**

R: "Restricted — under 17 requires accompanying parent or guardian."

Parents are advised of the adult content of an *R* film. The language may be harsh, extreme violence and drug use may be depicted, and nudity and sexual activity may be seen. In some areas the restricted age is 18, not 17.

X: "No One under 17 Admitted."

Minors may not be admitted to an *X* film, even if their parents permit it. *X* is not a mark of obscene or pornographic content. Only the courts can make a legal obscenity ruling. The film is considered "patently adult" because of sexually derived language, explicit sex, excessive and sadistic violence.

With the exception of *X* films, CARA cannot prohibit movie viewing, nor does it seek to. Rather, it attempts to find a balance between moral values and freedom. "I'm convinced," says Richard Heffner, "that the price of film censorship would be too great — it could undermine free expression in other areas as well. Our voluntary system provides a practical mechanism for satisfying parents' needs without resorting to censorship."

standards than other forms of expression because broadcasters are given a license to use a scarce public resource, the airwaves. For this reason, as stated in the Communication Act of 1934, broadcasters must serve the public "convenience, interest, or necessity." As a result, programming need not be legally "obscene" to be prohibited from the airwaves. The Federal Communications Commission (FCC), the broadcast media's governing body, regulates what it calls "indecency," which it defines as "patently offensive" descriptions of "sexual or excretory activities or organs." This permits the FCC to prohibit profane language, a regulation upheld by the Supreme Court in 1978 in what came to be known as "the 7 dirty words" case.

Those who favor the second approach support the kind of action taken by the FCC in the spring of 1987. Responding to mounting public concern, the FCC acted to curb the sexually explicit and scatological talk shows which have recently become popular on radio. The commission sent letters of warning to a radio station in Philadelphia that broadcasts one of the "shock radio" talk shows. It also warned a station in California that played a sexually explicit rock song, and threatened criminal action against a Los Angeles station that aired a play depicting homosexual fantasies. Both the FCC and the Supreme Court have made it clear that their principal concern in such cases is protecting children. In fact, the FCC generally permits "indecent" broadcasting after 10 P.M., when most viewers and listeners are adults.

Besides flirting with "indecency," television programmers offer a regular diet of violence and mayhem. Public-interest groups have tried to use television's regulated status to persuade the FCC and Congress to pass rules counteracting the effect of potentially harmful program content. The National Coalition against Television Violence, for example, asked Congress to pass legislation requiring, among other things, that one-third of all air time for music video programming be set aside for "non-violent and non-degrading entertainment."

Advocates of stricter measures to protect minors also favor steps that would restrict the sale of products available in the marketplace. The Supreme Court has given its blessing to separate standards for adults and juveniles by upholding state and local laws that allow sales of offensive books, magazines, and videocassettes to adults but forbid sales to minors.

Prohibiting sales to minors, however, does not prevent children from browsing through violent or sexually explicit material, which is often openly displayed at magazine stands and drugstores. In recent years many states have tried to close this loophole by requiring stores to place sexually explicit material inside plastic wrappers, or to establish adult-only areas. In 1985, the state of Virginia made it a crime to knowingly display such books or magazines where a juvenile could peruse them. The law was overturned by a federal judge, but the Supreme Court has agreed to hear the case.

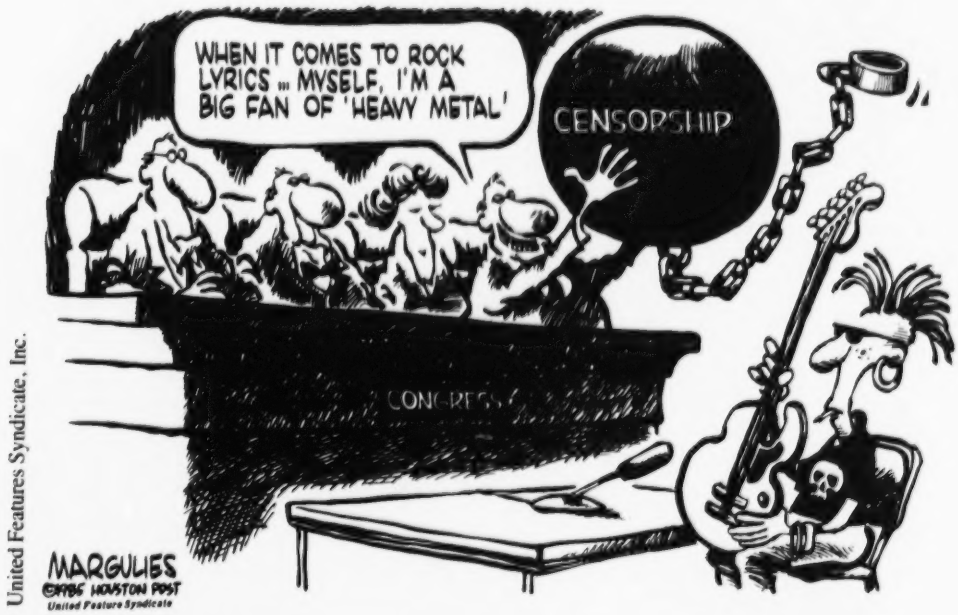
In the past the Court has complained that such laws amount

"Devilish" album cover for heavy metal group AC/DC.

to "burning the house to roast the pig" — they accomplish the good of protecting children at the cost of infringing on the First Amendment rights of adult consumers. But to many people, such laws are an appropriate solution to keep minors from seeing materials that are unsuitable for them, while allowing adults to buy the same material if they wish to do so.

Advocates of stricter controls generally favor similar measures for offensive song lyrics. In the aftermath of the Senate hearings on rock lyrics, at least a dozen states are considering, and several states have already passed, amendments to their obscenity statutes outlawing the sale to minors of records with offensive content. Since minors are the principal market for rock music, such laws could put a number of bands and record producers out of business. Supporters of such legislation are not fazed by this prospect. As one state legislator said, "What we're saying to industry is, 'Tell your artists to stop putting this junk out.'" In several cities, parents have protested to force certain groups to clean up their live act. Some groups, in concert, sometimes squirt beer on the audience and urge girls to take off their clothes.

The founders of the Parents Music Resource Center tried to persuade the record industry trade association to institute a voluntary rating system like the one that now governs the film industry. "Voluntary labeling," PMRC's Tipper Gore told the Senate committee, "is not censorship. Censorship implies restricting access or suppressing content." But the record industry demurred, replying that a labeling system would be cumbersome and overly restrictive. Eventually, both sides agreed that recordings with songs involving explicit sex, violence, or drug and alcohol abuse would be labeled "Explicit Lyrics: Parental Advisory."


WHEN IT COMES TO ROCK LYRICS ... MYSELF, I'M A BIG FAN OF 'HEAVY METAL'
CENSORSHIP
CONGRESS
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The Illusion of a Reasonable Compromise

Advocates of the first of our three choices — those who call for stricter controls on harmful speech — feel that such halfway measures, regulations, and voluntary compliance simply will not work. As a practical matter, they believe, if certain offensive or potentially harmful messages are contained in song lyrics, TV shows, or videos, children and teenagers will inevitably see them. Thus the only real solution is to restrict their production.

In fact, the PMRC recently complained that record companies have either failed to use the "Explicit Lyrics: Parental Advisory" label, or they have exploited it to sell albums as forbidden fruit. To many young record buyers the sight of a parental advisory label is the perfect inducement to purchase.

Moreover, as proponents of the first position see it, it's not just messages for juvenile audiences that should concern us. Restricting the exposure of children to offensive material does nothing to shield adults from equally dangerous speech, such as cigarette and tobacco advertising.

Others, however, pose quite a different objection to this second course of action. A generation ago, they note, the great evil wasn't televised violence, it was comic-book violence. Before parents were concerned that heavy metal music might make children ungovernable, they were concerned that Elvis Presley would have the same effect. Comic book violence declined, and Elvis passed from the scene, but teenagers remain intractable. Perhaps, say critics of restrictions designed to protect young people, popular culture does not cause, but simply reflects the perennial dissatisfaction of the young.

Some people, for instance, find it hard to believe that rock lyrics about suicide make teenagers kill themselves. "Unless a child lives in an otherwise conflict-free and media-free environment," observes *New York Times* reporter Jon Pareles, "rock songs are generally tamer, and more abstract, than many other aspects of everyday life." Surely no song, critics argue, can be powerful enough to overcome a child's upbringing. Parents who fear that their own teaching will prove weak next to the persuasion of rock music, or television, or certain school library books, may be shirking responsibility, critics charge. Perhaps they should be talking about television with their children, or insisting that their children watch less television, rather than firing off angry letters to the local TV station.

What's more, civil libertarians say, the rights of speakers and listeners — even underage listeners — are too important to abridge without stronger evidence of harm than has come to light so far. Laws that restrict the display of sexually explicit magazines, for example, inevitably hamper the access of adults to such material. Rating systems, whether for movies or rock lyrics, pose the threat of a "chilling effect" on the producer. Civil libertarians believe that parents, not the courts or the government, should exercise control over what children see and hear.

To these arguments, advocates of this second choice say that the harm to children is real, while the harm to freedom of speech posed by rating systems and voluntary restraint is exaggerated. Surely, they argue, an intermediate path between total restriction and total permission is the wisest course to follow.

But is it? Can anyone feel secure beneath the canopy of the First Amendment when we open up an exception here and a fine distinction there? We turn now to those who regard every compromise to the principle of free speech as a threat to our freedom.

26

4

First Principles And Free Speech

> **"Few forms of speech, even those directed primarily at children, pose a clear and present danger to our society. Speaking freely is the cornerstone of all of our freedoms, and this right should be abridged rarely, if at all."**

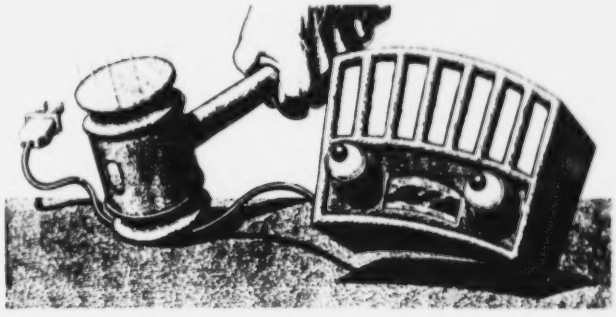
The Bill of Rights is often referred to as the fundamental charter of American liberties, and for good reason. The ten amendments that are contained in it were designed to restrict the role and authority of the government. It is no coincidence that the very first amendment should specify that "Congress shall make no law ... abridging the freedom of speech.... " As Justice Benjamin Cardozo asserted, "Freedom of speech is the indispensable condition of nearly every other form of freedom."

That is the point of departure for our third view, which advocates a strict interpretation of the First Amendment. The view was described this way by Justice Hugo Black: "I take 'no law abridging' to mean *no law abridging*." One of our distinguishing features as a society, as people who take this view insist, is a staunch defense of individual freedom, which begins with the freedom to think and say what we please, without fear of censorship or government reprisal. To secure that right, we depend primarily on the Supreme Court and its interpretation of the First Amendment. Its decisions on freedom of expression, as political scientist Walter Berns remarks, "constitute the law of liberty on which we all depend."

Those who favor a strict interpretation of free speech believe that the law of liberty should be abridged rarely, if at all. From this perspective, few forms of speech—neither television violence, nor offensive rock 'n' roll lyrics, nor the ravings of Ku Klux Klansmen—pose a "clear and present danger" to our society. Although advocates of this view approve of certain commonsense restrictions, such as limiting the availability of hard-core pornography to children, they generally oppose anything that would restrict or prohibit free expression.

The Supreme Court's decisions in the area of civil liberties often illustrate the tensions between individual liberty and social order. Yet people who take this position insist that the rights of the individual are not necessarily in conflict with the interests of society as a whole. In a free society, they feel, the fullest freedom of expression for individuals also serves the interests of everyone in that society.

The premise of this last view is that the greater harm lies not in the effects of certain objectionable kinds of speech but in restricting speech. Since speaking freely is the cornerstone of our freedoms, we restrict freedom of expression at our peril.



Mirko Ilic

WAKE UP, AMERICA!
DON'T LET YOUR PRECIOUS FREEDOMS SLIP AWAY!
JOIN ME IN SINGING THE PRAISES OF OUR GREAT AMERICAN FREEDOMS
FREEDOM OF SPEECH! FREEDOM OF WORSHIP! FREEDOM FROM WANT! FREEDOM FROM FEAR!
PLUS, AS AN EXTRA BONUS, THAT GREAT NEW FREEDOM WE'RE NOW PROMOTING...
FREEDOM FROM CHOICE!
ROUNDTABLE
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The Benefits of Free Speech

To advocates of this perspective, a strict defense of the right to free speech makes sense for various reasons. Consider, for example, the range of artistic expression in this country and the achievements of Americans in creative writing, painting, classical and popular music, dance, theater, and cinema. In countries where the government curbs freedom of speech, they point out, artists are often looked upon as instruments of state policy. If they cannot be put to use, they are often regarded as dangerous and dissident voices that must be harnessed or silenced. Though it is not often acknowledged, the creativity of Americans in many areas is a result of a cultural environment in which a great range of expression flourishes. In the United States anything can be said, so everything *is* said.

But liberty is not only for artists. By guaranteeing our right to "petition the government for a redress of grievances," freedom of expression allows us to control our destiny. Moreover, it ensures a constant scrutiny of government operations. One of the most prominent Supreme Court decisions in recent years concerned the Pentagon Papers. In 1971, the Supreme Court defended the right of former Pentagon analyst Daniel Ellsberg to give to newspapers thousands of pages of secret government documents pertaining to the Vietnam War. Attorneys for the government claimed that publication of the documents imperiled national security, but the Court replied that only the gravest threat could justify keeping information from the public.

One of the government officials who testified in court against publication of the Pentagon Papers in 1971, Undersecretary of State William McComber, later said that he had misgivings about his position. "Nothing is more important to me than the security of the United States," McComber said. "But the First Amendment is, in another way, the security of the United States." Freedom of speech, in this view, guarantees that the people, and not the government, are sovereign.

"Freedom to think as you will and to speak as you think," Justice Louis Brandeis once said, "are means indispensable to the discovery and spread of political truth." Defenders of free speech sometimes say that they regret that those who test the public's tolerance in the marketplace of ideas are such an unpresentable lot—pornographers, Nazis, and spokesmen for the Ku Klux Klan, among them. "The right to free speech," said civil liberties lawyer Aryeh Neier at the time of the Skokie march, "is always tested at the extremes. Rarely are centrist groups denied their First Amendment rights."

Why should we care about the right of Nazis or Klan members to spread their racist message? After all, white supremacist literature does not seem to advance the "spread of political truth." Many people would prohibit the production or distribution of sexually explicit materials on the same grounds, that the message they contain serves no socially useful purpose.

But the response of people who advocate this third position is that even questions that are not political in the usual sense are matters which should be subject to public debate. In that debate, they say, no point of view should be disqualified on the grounds that it offends some or even most viewers or readers.

ACLU lawyer Barry Lynn maintains, for example, that if sexually explicit material did not promote controversial ideas it would not provoke such an angry response. The same thing could be said about violent images on television, about liquor advertising, and about the political program of the Ku Klux Klan.

Ultimately, as advocates of free speech see it, the First Amendment is meant to benefit not only the speaker but the listener. The right to listen, free speech advocates advise, is every bit as crucial as the right to speak. At times listening may be an acutely painful and troubling process. But the public, in this view, has a need to know, a need to test accepted but possibly outworn ideas against new ones. This can be done, they believe, only in an environment that allows the airing of competing viewpoints.

Indeed, this belief that the search for truth is more important than any single faith is one of America's distinctive contributions to the art of government. Justice John Harlan, a conservative Supreme Court judge, endorsed this view when he wrote: "The constitutional right of free expression is powerful medicine in a society as diverse and populous as ours. It is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry. . . ."

Censorship Is Contagious

Advocates of the first view we considered propose new restrictions on certain extreme voices, such as avowed Nazis, or the most violent television programming. From their perspective, little would be lost in doing so. In fact, such censorship amounts to a public service. Why should we *not* censor such reprehensible messages?

Those who take this third view have a ready answer. Every act of censorship, in this view, begets another such act. "Censorship," says free-speech lawyer Floyd Abrams, "is contagious. Censorship is habit-forming." Thus, the argument goes, certain forms of speech cannot be restricted without threatening the very principle of free speech, and the right of minorities to speak their views, even in the face of majority opposition. For this reason, observes the ACLU's Aryeh Neier, it is the Jews who most need the ACLU to defend the rights of Nazis, and blacks who most need the ACLU to defend the rights of the Klan.

People who are afraid of the "slippery slope" of censorship recall the McCarthy era as a cautionary lesson, a reminder that freedom of expression is by no means to be taken for granted. Thirty-five-years ago in the heyday of Senator Joseph McCarthy, scholars, writers, civil servants, and others were pub-

Shakespeare, Salinger, Sendak Censored

Recently, parents' groups and individuals in dozens of communities across America have voiced concern about—or even attempted to restrict distribution of—books, plays, magazines, and other forms of speech. Taken from a report by the organization, People for the American Way, that cites more than 100 such incidents in a single year, here is a sampling of the kinds of "censorship activities" that have occurred recently, and their outcomes.

Catcher in the Rye—The removal of J.D. Salinger's novel from Howard County, Maryland, school libraries was urged by Concerned Women for America because of language they deemed "obscene and vulgar." A library committee kept the book on the shelves.

The Color Purple—Alice Walker's Pulitzer Prize-winning novel, charged a Chandler, Oklahoma, high school parent, contains "objectionable sexual material." The board of education set up a review committee.

Death of a Salesman—Citizens on Positive Education found in this Pulitzer Prize-winning play by Arthur Miller "gutter language" and "condoning of stealing." But the Corning, New York, school board kept the drama in the curriculum.

Fame—Parents in Salida, Colorado, succeeded in removing from a high school production of the play a line they considered a "vulgar play on words."

Grease—In Severna Park, Maryland, the high school principal objected to a student staging of the musical because it "advocates sex, booze, and rock 'n' roll." Another play was produced by the students.

In the Night Kitchen—Maurice Sendak's illustration of a naked child in this children's book was changed by a Greeneville, Tennessee, school librarian who "didn't feel comfortable with the material on my shelf." The librarian drew pants on the character.

Mademoiselle, MS, and Redbook—Parents in DeSoto, Kansas, found these magazines to contain "sexually explicit" articles. The high school librarian was requested by school officials to draw up a policy to choose magazines.

Merriam-Webster College Dictionary—Nash County, North Carolina, primary and junior high school libraries removed the dictionary because parents objected to the "definition of certain words."

Romeo and Juliet—A film version of Shakespeare's play was removed from the English curriculum of an Edmond, Oklahoma, high school. The National Federation for Decency declared the film "encouraged suicide and drug use."

Jacobson/Archive

"Book burning" is more than a cliche—sometimes it is a reality, as here in Houston, Texas.

licly castigated, and their lives and careers were destroyed by allegations of Communist sympathies.

Today, many civil libertarians feel that a censorship mentality is arising once again. They point, for example, to the recent action on the part of the Federal Communications Commission to place restrictions on material deemed unsuitable for radio broadcast. Going well beyond its earlier prohibition on the use of "7 dirty words," the FCC announced recently that it intends to punish any radio station that allows the use of "patently offensive language" — a more comprehensive, imprecise, and judgmental standard.

Civil libertarians also cite such examples as the passage in 1985 of a stringent obscenity law in North Carolina. In the new mood of enforcement unleashed by the law, a 21-year-old clerk in a convenience store was arrested after selling two magazines to an undercover policeman. A jury determined that the magazines were obscene and convicted the sales clerk. Subsequently, the judge sentenced her to six years in jail and a $10,000 fine.

From this third perspective, there is reason for concern, too, about the Meese Commission and its potential impact. In the words of the ACLU's Barry Lynn, "If the Supreme Court — and now this federal commission — can affirm that certain ill-defined 'obscene' materials should be excluded from the category of protected speech, who is to blame the local decency group for pushing a little further and seeking to restrict *R*-rated movies on cable or trying to get the Judy Blume book removed from the school library because of the special need to protect children from the 'wrong' attitude the materials could foster."

The Big Chill

Just as advocates of this view fear the "slippery slope" of censorship, they also warn of the dangers of the so-called "chilling effect," or self-censorship. The ACLU's Barry Lynn cites the controversy over the presence of adult magazines in 7-Eleven stores as an example of the chilling effect. No judge or law enforcement official ordered the removal of copies of *Playboy* or *Penthouse* from these stores. The Southland Corporation which owns 7-Eleven voluntarily removed these publications.

What this represents, as advocates of this third view see it, is a clear instance of self-censorship. When this happens, either the speaker or the distributor of certain materials softens the message or deletes certain passages to forestall criticism and avoid possible criminal penalties.

Such self-censorship was clearly evident in the McCarthy period, when many people refrained from taking controversial positions because of fear of reprisals. As advocates of this third position see it, the same kind of influence is evident today in such places as North Carolina, which has imposed tough new obscenity laws. The manager of one video store chain in that state stopped renting such popular and critically acclaimed films as *Victor/Victoria* and *Passage to India*, anticipating that they might offend some community members. Several newsstands simply closed their doors. Librarians at the University of North Carolina at Greensboro decided to keep some questionable materials, including sex education manuals, out of sight. Similarly, a film professor stopped showing certain controversial European movies in his courses.

Advocates of free speech fear that, in the wake of the FCC's recent crackdown on "shock radio," freedom of expression over the airwaves will be similarly curtailed. In the judgment of Monroe Price, law school dean at Yeshiva University, "the threat to broadcasting licenses worth tens and hundreds of millions of dollars — and the prospect of federal prosecution — will have its intended chilling effect." What concerns civil libertarians is that the "chill" could eventually extend to programming on divisive political issues, and thus curtail the range of viewpoints expressed.

The chilling effect can also be seen at work among textbook publishers who have omitted the word "evolution" from high school biology texts to avoid offending proponents of creationism. Critics of the movie rating system point out that filmmakers have on several occasions deleted entire scenes to avoid an *X*-rating. School librarians are increasingly wary about ordering books and magazines that might draw protests from parents.

Most of all, advocates of free speech feel that once we hand over to government officials or to our fellow citizens the right to determine what we can read or view or say, *all* of our individual rights are placed in danger. The intention of the First Amendment was to allow individuals to be the final arbiters of what they say, what they hear, and what they read.

The Textbook Controversy

On March 4, 1987, U.S. District Court Judge Brevard Hand ordered the removal of more than 40 textbooks from the state of Alabama's public schools. Judge Hand accepted an argument, long advanced by conservative and fundamentalist religious groups, that many school texts, avowedly neutral on questions of religion and ethics, in fact promulgate a religion known as "secular humanism." Just as the teaching of Catholic or Protestant doctrine in the public schools has been held by the Supreme Court to violate the First Amendment's "establishment of religion" clause, so does the teaching of secular humanism, Judge Hand said.

The federal court decision, which is almost certain to be reviewed by the Supreme Court, was another blow in the nonstop battle between the parent and religious groups who object to many school texts, and the free-speech organizations and teachers who consider such activity censorship.

Not all textbook critics are fundamentalists or even conservatives. In the 1960s and 1970s liberal groups sought to remove allegedly stereotyped descriptions of women, blacks, native Americans, the handicapped, and others from school texts. In recent years parents in Houston tried to have Mark Twain's *Huckleberry Finn* removed from public school libraries on the grounds that it contained racist language. And in California another group charged that the use of pictures of ice cream and other "junk food" in texts encouraged poor eating habits, and should be ended.

In recent years the conservative critique of school texts has become dominant. One couple, Mel and Norma Gabler, who live in Longview, Texas, have exerted an extraordinary power over textbook content by examining, and angrily denouncing, texts submitted for use in that state's school system. As a result of their criticisms, as well as those of such groups as the Eagle Forum and the Moral Majority, the publishing firms which put out school texts have rewritten whole chapters on such sensitive topics as human sexuality and evolution.

What is behind the conservative critique is the belief that schools now teach beliefs hostile to those of many parents. According to the Gablers, "psychological conflict is caused when students are taught one set of values at home or church and another set at school." The plaintiff in a court case, in rural Tennessee, was more explicit. "There's not one story in all the readers," he complained, "that supports or portrays the traditional family role."

THE PILGRIMS CAME HERE SEEKING FREEDOM OF YOU KNOW WHAT. WHEN THEY LANDED THEY GAVE THANKS TO YOU KNOW WHO. BECAUSE OF THEM WE CAN WORSHIP EACH SUNDAY YOU KNOW WHERE!
STAYSKAL 85 TAMPA TRIBUNE
Stayskal — *Tampa Tribune*

In a number of states, including Texas, California, and Florida, textbooks are chosen at the state level rather than by individual school systems. Publishers afraid of losing such major markets have often soft-pedaled controversial material in advance — a practice which critics consider an instance of the "chilling effect," or self-censorship.

Those who seek to remove books already in the schools have faced a different problem. The courts have not been sympathetic to attempts to take controversial books and magazines off library shelves and out of the classroom. Thus, many activists have sought to have the books banned on the grounds that they violate the First Amendment's prohibition against the establishment of a state religion — in this case, secular humanism. This has been especially true with texts and course material on sex education and ethics. Conservative activists have claimed that in many such works religious precepts have been replaced with a secular, relativistic philosophy which itself constitutes a religion. It was this theory which Judge Hand accepted.

Scholars and free-speech groups have taken strong exception to the campaign to remove school texts. Secular humanism, they say, is nothing more than the pluralistic teaching of values and culture without reference to specific religions. After the Alabama ruling, John Buchanan, head of People for the American Way, said that "secular humanism is really a straw man created by religious leaders." He called Judge Hand's decision "judicial book burning."

Dana Fradon;
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"So what if the First Amendment does go? We still have twenty-five more."

More Speech, Not Enforced Silence

So this third perspective insists upon the importance of free speech and it emphasizes the dangers of abridging it for any reason. Finally, the First Amendment rests upon what constitutional scholar Archibald Cox refers to as "faith in the ultimate good sense and decency of free people."

From this perspective, the urge to restrict certain messages reflects a lack of faith in the judgment of the people. If you believe that many adults are unable to resist the messages of pornographers, advertisers, and political extremists, then it may make sense to shield everyone from potentially harmful messages. But this, wrote *Chicago Tribune* editorialist Stephen Chapman, is "an approach worthy of a nation of children." As advocates of this third view conclude, it is certainly not what the framers of the Bill of Rights had in mind.

But if we choose not to restrict messages that many people regard as offensive, what can be done to limit the harm they might cause? Advocates of this third perspective offer a simple reply: fight speech with speech. "The remedy to be applied," as Justice Brandeis observed, "is more speech, not enforced silence." Exposure to sexual material should be combated with better sex education courses, as the ACLU said in response to the Meese Commission. Rock musician Frank Zappa told U.S. senators only half-jokingly that parents should send their children to music appreciation courses rather than insisting upon action to restrict offensive songs.

Advocates of this view also offer a second piece of advice as an alternative to censorship: turn away. Many civil libertarians support laws that prevent what is known as "thrusting" — the display of offensive speech in a way that violates the privacy rights of unwilling passersby. These include ordinances that regulate the way adult bookstores advertise their wares. Beyond that, civil libertarians say, anything that can be ignored should just be ignored. If you find some TV fare to be offensive, change the channel or turn off the television. If you are offended by a magazine sold in a local store, don't buy it — but you do not have the right to prevent others from buying that magazine if they choose to do so.

Only under the most extreme circumstances, civil libertarians say, is the suppression or regulation of speech justified. Where certain forms of speech pose an imminent and grave threat, then restrictions on speech are appropriate. But *speculation* about possible harm is a different thing from a clear and present danger. Proponents of this view, for example, feel that speakers who advocate the creation of an Aryan state, even in a Jewish neighborhood, do not pose such a danger. Defenders of the Nazis' right to march through Skokie said that prohibiting the march because angry listeners *might* riot amounts to caving in to "a heckler's veto." They suggested that instead of banning the march, those who opposed it should have ignored it, or replied to the Nazis' speech with their own.

In several respects, this third perspective is based upon the premise that a democratic nation has to encourage people to think independently. That requires something more than the recognition of diversity. It requires exposure to a variety of ideas and viewpoints.

Advocates of the other two viewpoints we considered reply that while this insistence upon independent thinking and a search for the truth is an admirable principle, it does not take into account certain realities such as the swelling tide of offensive and potentially harmful speech. To do nothing about these messages because their harmful effects cannot be proved beyond a shadow of a doubt, or because of such abstractions as "the slippery slope" or "the chilling effect," seems foolhardy and irresponsible. Society's obligation to protect the rights of individuals to speak their minds should not overwhelm our concern for the welfare of the society.

Marshall Perlin, a civil liberties lawyer, criticized the ACLU's decision to support the rights of the Ku Klux Klan members to demonstrate in public, arguing that it defended those rights with "abstract" arguments. "When you talk abstractly about the First Amendment," he told ACLU executive director Aryeh Neier, "you are ignoring the rights of blacks, which are in imminent and real danger now." Perlin said he did not feel comfortable opposing free speech. "All I'm saying," he said, "is the Klan is real, the Klan is dangerous. You'd better wake up to that," he told the ACLU leader, "before it is too late."

At a time when various groups are calling for new restrictions on speech the question of whose view shall prevail on freedom of speech is a matter of some importance. The question remains: Where should the line be drawn that permits certain forms of speech and prohibits others? Debate on this question will no doubt continue. Opposing views will receive a complete airing. And that, say defenders of free speech, is what the First Amendment is all about.

A Civil Dialogue

> "People disagree about the extent of the harm caused by speech, and what, if anything, should be done to restrict potentially harmful messages. The issue, however, comes down to: What do we value as a society? And what are we prepared to tolerate as a price of maintaining our freedoms?"

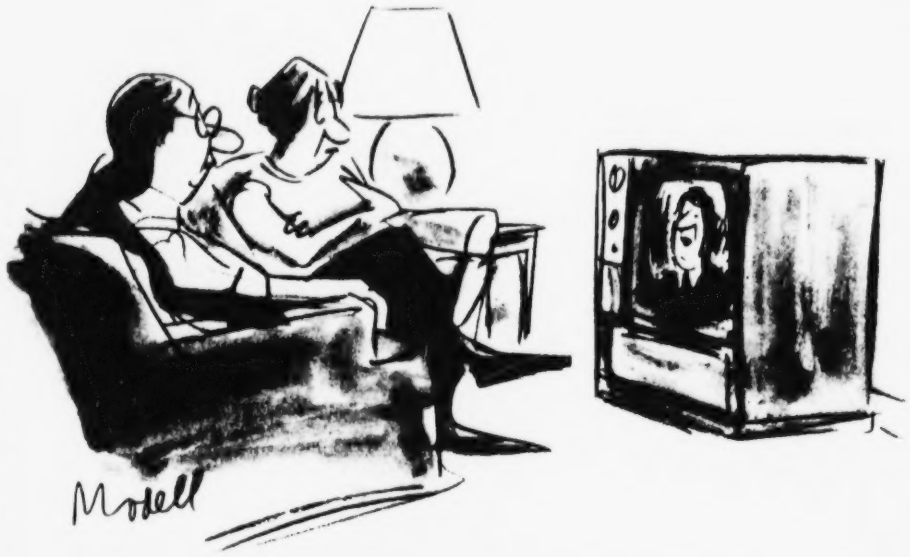
"Congress shall make no law . . . abridging the freedom of speech. . . ." In the nearly 200 years that have passed since the drafting of the Bill of Rights, local judges and Supreme Court justices have interpreted and reinterpreted these words but generally upheld their original intent. In the past two centuries, however, a great deal has changed. The Founding Fathers could not have imagined that their simple commandment would one day be applied to words and images transmitted by glossy magazines, on giant movie screens, and particularly over the airwaves, which can bring one message to tens of millions of Americans all at once.

The growing influence of these printed, filmed, broadcast, and telecast messages is one reason why many Americans are concerned about free speech. Another reason for growing concern is a widely shared sense that much of what appears in various media is irresponsible, offensive, even dangerous. In our discussion we have presented three distinctly different views of this issue, and each of these views leads to a preferred course of action. Proponents of each of the three views recognize that speech *can* cause harm. But advocates of the different approaches disagree about the extent of that harm, and what, if anything, should be done to restrict potentially harmful messages. Two of the approaches favor new restrictions on certain types of speech, while the third argues that such restraints are not only unnecessary but are themselves potentially harmful.

Those who hold the first view are alarmed by what they consider, in the words of Justice Holmes, the "clear and present danger" posed by certain types of speech. For them it is clear, for example, that sexually explicit material, depictions of violence or the advertising of certain products can cause harm to individuals and to society as a whole. Millions of Americans are now affected by drug and alcohol abuse, violent crime, and the deterioration of moral values. Citing evidence linking certain forms of expression to these conditions, people who favor the first approach would like to see new restrictions on harmful speech.

Those who hold a second view agree that the dangers caused by speech are clear, but they believe that the only people who need to be shielded are minors. Advocates of this view would strengthen the double standard on speech by erecting additional barriers to shield impressionable young people from the harmful messages transmitted by television and radio, movies, books, and magazines. At the same time, however, they would take pains to guarantee that adults still enjoy free access to ideas and materials.

Those who advocate a third approach feel that, except in rare cases, speech — even quite offensive speech — does not pose a clear and present danger to anyone. Speech should be restricted only when absolutely necessary. What is overlooked in discussions of the potential costs of free speech, they say, are its far more important benefits. The First Amendment, as they see it, was intended to allow individuals to control what



Drawing by Modell; © 1976 The New Yorker Magazine, Inc.

"Due to the mature subject matter of the following program, we recommend that viewers get a grip on themselves beforehand."

they can see, read, and hear—and to control their government. They believe that even the slightest abridgment of free expression can have a "chilling effect" on producers of speech and create a "slippery slope" that can lead to more harmful forms of censorship.

Issues and Answers

The discussion about where to draw the line on free speech is far from abstract. As we have seen, each of these approaches has been applied to a host of controversial issues — issues that are currently being debated in communities across the country. To illuminate the differences betweeen these approaches, let's compare the way different people would approach some of these issues.

If you believe that the relentless presentation of violent images on television encourages callous and violent behavior on the part of viewers — and that the First Amendment should not protect such messages — then you would endorse our first choice. Following this approach you would probably favor new FCC regulations to sharply reduce the amount of violent programming on TV. If, however, you believe that exposure to violence on television has little effect on adults but poses a specific threat to children, you would favor less sweeping restrictions, such as prohibiting extremely violent programming on TV before 10 P.M. But if you believe that exposure to violence on TV does not predispose people to commit acts of violence, you may advocate the third approach. Instead of placing restraints on programming, you conclude that we should simply attempt to balance negative images with positive messages and parental guidance.

The question of what to do about off-color radio programming can be dealt with in similar ways. Those who are offended by what they hear on the radio, and who favor our first choice, want the FCC to establish stricter guidelines on the language that can be used over the air and the subject matter that can be discussed. Those who favor the second choice want tougher restrictions to protect young people. But they would relax these standards late in the evening when most children are in bed. Those who support the third choice feel that no further restraints are necessary, that people who are offended by what they hear on the radio should simply turn the dial to a different station. If we encourage the FCC to crack down on "shock radio," they ask, what is to stop them from imposing additional restrictions on other kinds of messages?

Let's examine one more issue: sexually explicit publications sold on newstands, in drugstores, and convenience shops. Those who are concerned about this and who favor the first choice would prohibit the sale of such material in these stores — or at least place it under the counter and completely out of sight. Those who favor our second approach oppose such hardline restrictions because they believe that adults should have easy access to material. But they feel that children, who are more impressionable, should not have the same privileges. Accordingly, they argue, stores that sell sexually oriented material should establish "adults only" sections or place these publications in "blinder racks," where only the magazines' titles are visible. Those who advocate choice three recognize that many

people are offended by the sight of sexually explicit publications on magazine stands, and they acknowledge that children often can walk up to a display and leaf through the magazines of their choice. Still, they oppose strict restraints on the sale or display of these publications. Invariably, they believe, such restrictions infringe on the constitutional right of adults to peruse and obtain any type of material they wish.

If the passionate debate over free speech is a sign of the energizing value of the First Amendment, the divisiveness of the discussion should also be a warning. In a truly free marketplace of ideas, disputes are inevitable, even desirable. Yet the debate over free speech threatens to be little more than a shouting match, and not a very productive one at that.

Women Against Pornography, to take one example, claims that the American Civil Liberties Union "has been bought off" by pornographers. Religious fundamentalist groups concerned about the books children are exposed to in school sometimes charge their secular opponents with seeking the virtual downfall of the American way of life. Those who staunchly defend free speech, on the other hand, often stigmatize their critics as "censors," and lump them together into a single reactionary band. To be useful, debate must not only be free but at least minimally civil. And civility requires not only that we listen but also acknowledge the seriousness of viewpoints with which we disagree.

Drawing the Line, Carefully

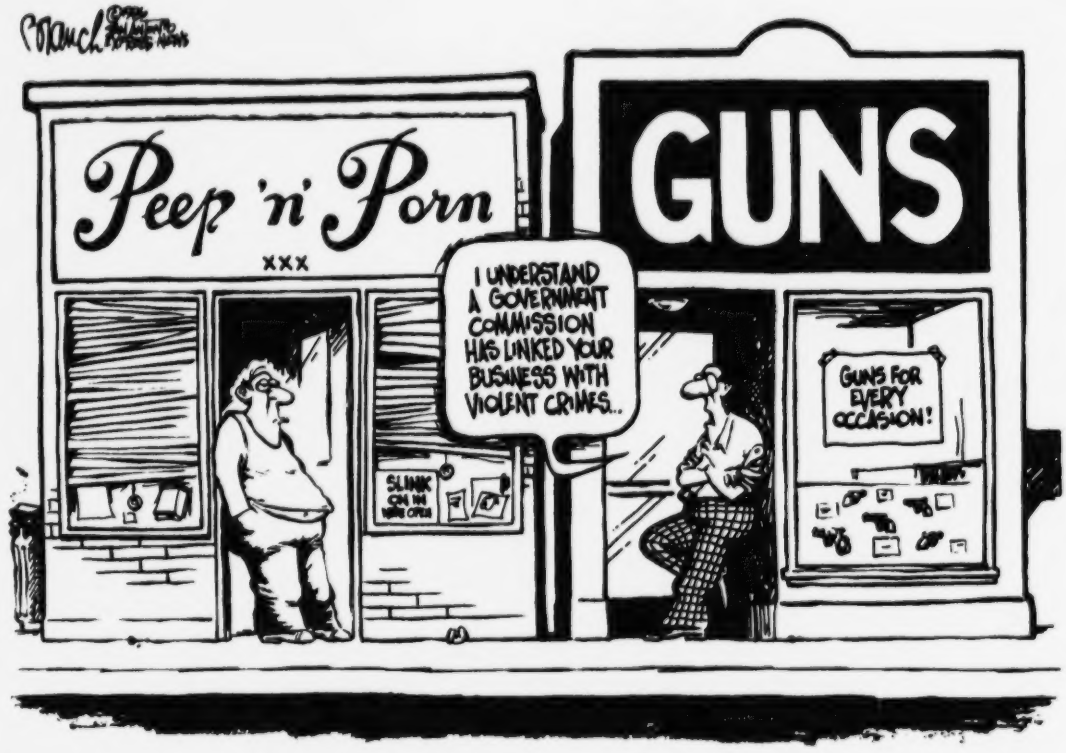
As we have seen, there are real differences about the potential harm that may be caused by certain kinds of messages. Yet it is not enough to consider only the potential dangers of free speech, and where to draw the line so as to limit or eliminate the harm. We also need to consider the possible damage to individual rights each time that line is redrawn.

Those who favor new limits on speech feel that a brick or two can be removed from the First Amendment without endangering the whole edifice of constitutionally guaranteed rights. Certain kinds of offensive speech, they say, can be restricted without infringing on the rights that the First Amendment was intended to protect. Surely, parental advisories on record albums or proposals to abolish cigarette advertising do not significantly restrict freedom of speech, they argue. Absent a brick or two, the edifice will not collapse.

Yet, civil libertarians warn, once certain forms of expression are restricted or banned entirely, where are censors going to stop? A few generations ago the pro-birth-control literature of Margaret Sanger was considered too incendiary to merit free-speech protection. Some parent groups now feel the same way about some of the novels of Mark Twain or Kurt Vonnegut. Parents in Tennessee found elements of witchcraft in the story of the *Three Little Pigs,* and Satanic worship in *Jack and Jill.* Perhaps, as Floyd Abrams said, censorship *is* contagious.

Across the country, local anti-obscenity statutes are being

"Each of the three approaches has been applied to a host of controversial issues that are currently being debated in communities across the country."


Peep 'n' Porn
XXX
GUNS
I UNDERSTAND A GOVERNMENT COMMISSION HAS LINKED YOUR BUSINESS WITH VIOLENT CRIMES..
GUNS FOR EVERY OCCASION!

John Branch, *San Antonio Express-News*

Debate continues over the sources of potential harm in our society.

drawn up faster than the courts can knock them down. Librarians in hundreds of school systems feel uneasy about stocking even remotely controversial books and magazines. Textbook publishers have proved all too willing to trim their sails to prevailing political winds. The principle of free speech commands widespread approval, yet it is often embattled when it comes down to specific instances where someone's exercise of free speech offends other people. The question of where we should draw the line is highly contentious. Speech sometimes hurts, and those who feel offended or injured by it are often inclined to remove the pain by removing the speech.

At the center of today's debate about free speech is a question that has been posed repeatedly over the past 200 years: What is the proper and acceptable balance between individual rights and the community's need to maintain order and to protect itself from threats to its health and safety? Just how these conflicting objectives are balanced depends, of course, on how the courts interpret the First Amendment. In a larger sense, however, it depends on what we value as a society and what we are prepared to tolerate as the price of maintaining our freedoms.

For Further Reading

For history and background on the First Amendment and free speech issues see *Free Speech in the United States* by Zechariah Chafee, Jr. (New York: Atheneum, 1969); *The System of Freedom of Expression* by Thomas I. Emerson (New York: Random House, 1970); and *Free Speech and Association: The Supreme Court and the First Amendment* edited by Philip B. Kurland (Chicago: The University of Chicago Press, 1975).

The controversy over the Nazi party's proposed march in Skokie, Illinois, is discussed in Aryeh Neier's *Defending My Enemy: American Nazis, the Skokie Case, and the Risks of Freedom* (New York: E.P. Dutton, 1979); and in the American Civil Liberties Union's *Why the American Civil Liberties Union Defends Free Speech for Racists and Totalitarians* (available from local ACLU offices).

For information about the alleged harm of sexually explicit material see the *Final Report of the Attorney General's Commission on Pornography* (Nashville: Rutledge Hill Press, 1986), and *Take Back the Night: Women on Pornography*, Laura Lederer ed. (New York: Morrow, 1980). For a critique on the dangers of rock music see *Let's Talk Rock: A Primer for Parents* by the Parents Music Resource Center (1500 Arlington Blvd., Arlington, VA 22209). The monthly newsletter of the National Coalition on Television Violence can be obtained by writing P.O. Box 2157, Champaign, IL 61820.

The case against "secular humanism" in high school textbooks is presented in *Textbooks on Trial* by James C. Hefley (Wheaton, IL: Victor Books, 1976), and bulletins written by Mel Gabler (Educational Research Analysts, P.O. Box 7518, Longview, TX 75607). The opposing viewpoint can be found in David Bollier's *The Witch Hunt Against "Secular Humanism"* (available from People for the American Way, 1424 16th Street, NW, Suite 601, Washington, DC 20036).

Acknowledgments

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NATIONAL ISSUES FORUMS

2. Freedom of Speech: Where to Draw the Line

Now that you've had a chance to read the book or attend the discussion, we'd like to know what you think about this issue. Your thoughts and feelings about this issue, along with those of thousands of others who participated in this year's Forums, will be reflected in a summary report prepared for policymakers and elected officials. Because we're interested in knowing how you've changed your mind, some questions are the same as those in the first questionnaire.

1. In general, do you think we Americans have too much freedom of speech, too little, or about the right amount?

a. Too much ☐
b. Too little ☐
c. About the right amount ☐
d. Not sure ☐

2. Indicate how you feel about each of the following statements.

	Agree	Disagree	Not Sure
a. Too much free expression and freedom of speech has caused our society to suffer from violence and spiritual and moral decay	☐	☐	☐
b. Our children are exposed to too much pornographic and violent material that is suitable only for adults	☐	☐	☐
c. No matter how offensive, free expression and freedom of speech must be defended against all forms of censorship	☐	☐	☐

3. For each of the following forms of speech or expression, indicate whether you think it should be: (1) Banned totally, (2) Shown on TV only late at night or otherwise kept from children, or (3) Not restricted at all.

	Ban totally	Keep from kids	Do not restrict	Not sure
a. Pamphlets and other writings by groups like the Nazi Party and the Ku Klux Klan	☐	☐	☐	☐
b. Condom advertisements on TV	☐	☐	☐	☐
c. Violence on prime time TV shows	☐	☐	☐	☐
d. "Hard core" pornographic movies such as *Deep Throat*	☐	☐	☐	☐
e. Violent cartoon shows for children like "GI Joe" or "Masters of the Universe"	☐	☐	☐	☐
f. Controversial books like *Soul On Ice* or *Slaughterhouse Five* in a school library	☐	☐	☐	☐
g. Magazines like *Playboy* or *Penthouse* being sold at 7-Eleven and similar stores	☐	☐	☐	☐
h. Beer and wine ads on television	☐	☐	☐	☐
i. Rock 'n' roll songs with lyrics about suicide, violence, sex, and drugs	☐	☐	☐	☐

(over)

(Question 3 Continued)

	Ban totally	Keep from kids	Do not restrict	Not sure
j. Cigarette ads in magazines and on billboards	☐	☐	☐	☐
k. Unusually violent movies like *The Texas Chainsaw Massacre* and *Nightmare on Elm Street*	☐	☐	☐	☐
l. Biology textbooks that discuss only evolution and not creationism	☐	☐	☐	☐

4. Which of these age groups are you in?

Under 18 ☐
18-29 ☐
30-44 ☐
45-64 ☐
65 and over ☐

5. Are you a

Man ☐
Woman ☐

6. What is your zip code? _____

7. We'd like to know whether, as you have read this book and attended the Forums, you have changed your mind about freedom of expression and what should be permitted. How, if at all, did you change your mind?

8. If there were just one message you could send to elected leaders on the topic of freedom of expression, what would it be?

Please hand this questionnaire to the Forum leader at the end of the session, or mail it to National Issues Forums at 100 Commons Road, Dayton, Ohio 45459-2777.

"I know no safe
depository of the
ultimate powers
of the society but the
people themselves;
and if we think
them not enlightened
enough to exercise
their control with a
wholesome discretion,
the remedy is not
to take it
from them, but to
inform their discretion
by education."

Th. Jefferson

Domestic Policy Association
100 Commons Road
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